

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No. 1292 of 2019 (O&M)
Date of decision: 01.03.2019**

Dharmender Singh

...Appellant

Versus

Jagdeep Singh Ghangas

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Arun Kumar Singal, Advocate,
for the petitioner.

Mr. Nishant Raj Ghangas, Advocate,
for caveator/respondent.

JAISHREE THAKUR, J.

1. Aggrieved against the order of eviction passed by the Rent Conroller, Panipat dated 01.10.2018 and the judgment of the Appellate Court, Panipat dismissing the appeal under Section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 by his order dated 21.01.2019, the instant revision petition has been filed.

2. In brief the facts are that the respondent-landlord filed an eviction petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as “the Act”) seeking eviction of the petitioner herein from shop No. 9, situated at Patti Rajputan, Panipat, known as Gandhi Mandi, Panipat.

3. In the eviction petition, it was pleaded that the petitioner-tenant

was in arrears of rent; and that the shop in dispute was required for the personal necessity of the landlord, while further submitting that the demised premises was unfit and unsafe and resultantly required construction.

4. Notice of the petition was issued and the petitioner filed his written statement pleading that he had taken the demised premises from Jain School Society, Panipat and he is a statutory tenant under the said Jain School Society, Panipat and that no rent is due to be paid by him. The respondent-landlord moved an application for assessment of rent and the directions to the petitioner to deposit the arrears of rent which application was allowed by the Rent Controller, Panipat vide order dated 20.08.2018. The respondent-landlord claimed rent on the ground that he had purchased the demised premises from Jain School Society, Panipat by way of sale deed and being owner he would now be entitled to claim rent. The application for assessment of rent and denial to pay the same was considered by the Rent Controller, who considered the contention of the petitioner that he was not liable to pay rent and that he was denying the relationship of landlord and tenant. The application was allowed by passing the following order dated 1.10.2018 :-

“Today the case was fixed for payment of the provisional rent by the respondent. No payment was made. No stay order with regard to the order dated 20.08.2018 has been either placed on record by the respondent or received from the learned Appellate Court. The ld. Counsel for the petitioner has stated that provisional rent has not been deposited by the respondent. It was made clear in the order dated 20.8.18 in view of the law

*laid down in **Rakesh Wadhawan and others vs. Jagdamba Industries Corporation and others** that on failure of the respondent to comply with the order, an order of eviction shall follow. Hence, the Court is constrained to evict the respondent from the suit property marked by letters ABCD and shown red in the site plan attached. The respondent is directed to hand over the possession of the property to the petitioner within a period of 30 days from the date of passing of the order. Memo of costs be prepared accordingly. File be consigned to the record room after due compliance.”*

Time was given to the petitioner herein to make a deposit and on failure to do so eviction order was passed and appeal against the same was dismissed.

5. Learned counsel for the petitioner herein contends that once there is a denial of relationship of landlord and tenant, there is no necessity or requirement under law for the Rent Controller to have assessed the provisional rent. In this regard, he has placed reliance upon a judgment rendered by Hon'ble the Supreme Court in **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation, 2002(1) R.C.R. (Rent) 514** to contend that provisional assessment of rent should be made only if there is a dispute regarding rent payable which is not the issue in the instant case. It is argued that the Rent Controller has erred in assessing the provisional rent.

6. Caveat has been filed and appearance has been caused by Mr. Nishant Raj Ghangas, Advocate, who contends that the judgment rendered in **Rakesh Wadhawan** case (supra) is applicable and on account of non-payment of rent assessed, the Rent Controller had no option but to order eviction, which has rightly been done.

7. I have heard learned counsel for the parties and I do not find

any merit in the contention raised.

8. Admittedly, an order dated 20.08.2018 came to be passed by the Rent Controller giving the reasons as to why he was assessing the provisional rent. Reliance was placed upon a sale deed Annexure P-1 which would reflect that the respondent had purchased the shop from Jain School Society Regd. Panipat. The option at that relevant time was for the petitioner herein to challenge the said order holding that the same was not maintainable and that if there was a denial of relationship of landlord and tenant between the parties, the Rent Controller ought not to have assessed the provisional rent. However, the petitioner herein for the reasons best known to him did not choose to challenge the said order thereby accepting the same. Once provisional rent has been assessed and not paid, the Rent Controller has no option but to pass an order of eviction in terms of the judgment rendered in ***Rakesh Wadhawan*** case (supra). The Appellate Authority too dismissed the appeal by taking note of the fact that order assessing the provisional rent was never challenged and thereby it was deemed that it was accepted and, therefore, since the provisional rent was not paid, the Rent Controller has rightly passed an eviction order.

9. Finding no infirmity with the impugned order, revision petition stands dismissed.

01.03.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.